

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4102 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SAJJAD HUSSAIN

Versus

DY INSPECTOR GENERAL OF POLICE,

Appearance:

MS NANDINI JOSHI for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1
NOTICE UNSERVED for Respondent No. 2
MR ANANT S DAVE for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 22/08/2000

ORAL JUDGEMENT

Rule. Mr. Anant S. Dave, Learned Addl.
Central Govt. Standing Counsel waives service of rule.

2. The petitioner has been serving in Armed Force as
Assistant Sub Inspector in the Rapid Action Force of
Central Reserve Police Force (100th Battalion). He

applied for, and came to be granted, leave during the period between 8th December 1997 to 4th January 1998, on the ground that the petitioner was suffering from severe renal colic. Upon getting the leave he went to his home town at Abu in Rajasthan. Petitioner was thereafter required to be admitted to the Government Hospital at Abu on account of recurrence of severe renal colic. Thereafter he was shifted to CRPF Hospital, Gandhinagar and from there, he was brought to Civil Hospital at Ahmedabad. This covered the period of January to March 1998. As the sanctioned leave of the petitioner was to expire and as he was still undergoing treatment, he sent a communication requesting for extension of leave, sending therewith the medical certificates and reports.

3. On or around 11th June 1998 the petitioner reported for duty after being declared fit by the Medical Officer. However, he faced order of suspending him on the very same date. On or about 4th August 1998 a charge sheet was issued to him in respect of misconduct of over-staying the leave period, without prior permission or sanction of the competent authority. Petitioner gave reply dated 28th August 1998 to the charge sheet, explaining the charge sheet. Inquiry was conducted against him in respect of the aforesaid charge, and by order dated 2nd July 1999 disciplinary authority imposed major penalty of stoppage of three increments with cumulative effect for five years. This order was subjected to challenge before the Appellate Authority, who by order dated 2nd March 2000 rejected the petitioner's appeal. That is why petitioner has been before this Court.

4. petitioner has challenged the impugned order of penalty on number of grounds, inter alia on the ground that the petitioner was not supplied with copy of the inquiry report, in order to enable him to make appropriate representation against said report. Petitioner has relied upon the Office Memorandum dated 27-11-1995 issued by the Central Government in this regard. I have gone through the affidavit in reply, but I am not able to find any denial to the effect that the inquiry report was supplied or not supplied to the petitioner. No assertion to the effect that the inquiry report was supplied or not supplied to the petitioner was also found. In that view of the matter, this fact remains unchallenged and this petition can be disposed of on that very ground.

5. In the above background, reference may now be made to the Office Memorandum dated 27-11-1995. The

relevant portion of the said Memorandum would read as under:-

" The undersigned is directed to refer to this Department's O.M. No. 11012/13/85-Estt.(A) dated 26th June,1989 on the subject mentioned above wherein it has been prescribed that in all cases, where an inquiry has been held in accordance with the provisions of Rules-14 of the CCS (CCA) Rules, the disciplinary authority, if it is different from the inquiring authority, shall before making final order in the case, forward a copy of the inquiry report to the Government servant concerned requiring him to submit within 15 days, his representation, if any, on the report of the inquiring authority. "

In the present case, it is not in dispute that the Inquiry Authority and Disciplinary Authority are different authorities. As a matter of fact, even on the question of penalty with regard to which a serious grievance has been made by the petitioner, the petitioner could have made appropriate representation. The petitioner could have also made representation with regard to adjustment of leave which might have stood to his credit. He could have as well made representation to the effect that he might be granted extra ordinary leave or leave without pay. He could have finally represented that, this was not a case at all for imposition of any penalty worth the name, and at the best, admonition could have been addressed to him. He could have even made representation with regard to regularisation of his suspension period. All the said opportunities, admittedly, have not been made available to the petitioner on account of non-supply of copy of the inquiry report. Therefore, there is clear violation of aforesaid Office Memorandum.

6. In view of the matter, this petition is allowed. The impugned order of imposition of penalty and treatment of suspension period will stand set aside. Rule made absolute in the aforesaid terms. No order as to costs. Direct service permitted.

Dt: 22-8-2000

(M.S. Parikh, J)

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